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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE 488th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 14 November 2001, at 10 a.m.

Chairman: Mr. BURNS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Fourth periodic report of Ukraine

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The meeting was called to order at 10.30 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

Fourth periodic report of Ukraine (CAT/C/55/Add.1)

1. At the invitation of the Chairman, the delegation of Ukraine took places at the Committee table.

2. Mr. ZAYETS (Ukraine), introducing the fourth periodic report of Ukraine (CAT/C/55/Add.1), drew attention to the major reforms that had been introduced in Ukraine since the third periodic report. The new Criminal Code had entered into force on 1 September 2001 and amendments had been made to the Code of Criminal Procedure and the Code of Civil Procedure. Reforms of the judicial system had also been introduced with a view to guaranteeing human rights.

3. In December 1999 the Constitutional Court had declared the death penalty unconstitutional and had abolished it, replacing it with life imprisonment. Under the new Criminal Code torture was defined as the premeditated use of any form of violence to inflict physical or psychological pain or suffering with the aim of forcing the victim or a third party to commit an act against his or her will. It established torture as a crime, and perpetrators were liable to prison terms of three to five years. In cases of repeated torture, or torture resulting from conspiracy by a group of persons, the sentence was 5 to 10 years.

4. In 1998 the State Penal Correction Department had been established. In 2000, the Government had endorsed a plan for the period 2000-2004 that sought to improve conditions in prisons and their management and create special prisons for those serving life sentences. In order to combat and punish unlawful conduct by law enforcement officers, a decree issued by the Procurator-General gave detainees the right to submit complaints directly to procurators. Those complaints were considered within 24 hours of their submission and in total independence from the law enforcement agencies. Further progress in the defence of citizens' rights had been made with the creation of the position of Ombudsman. In 2000, the Ombudsman had submitted a report on the observance and protection of human rights in Ukraine to the Verkhovna Rada, or Parliament.

5. The new Criminal Code provided for alternatives to imprisonment, including community service. It also provided for a much broader range of extenuating circumstances than the 1960 Code, including them in a separate section. Of particular importance was the recognition that the purpose of punishment was not the causing of physical suffering or the diminishing of human dignity. Sections of a bill on the enforcement of penalties had been adopted by Parliament and were being implemented. Fundamental reforms of the prison system adopted by the Government in 1991 were also being implemented and were in compliance with the Constitution, the Universal Declaration of Human Rights, the United Nations Standard Minimum Rules for the Treatment of Prisoners and other internationally recognized standards.

6. In August 1997, Parliament had ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and a delegation from the Committee established under that Convention had visited Ukraine from 8 to 24 February 1998. The Committee's report had been submitted to the Government, and the Procurator-General had met with a delegation from the Committee on 12 September 2000 at which the implementation of legislation relating to citizens' complaints had been discussed. On 13 September 2001, the Parliament had ratified Protocols 1 and 2 of the European Convention.

7. Although progress had been made in guaranteeing human rights in Ukraine, he was aware that problems and difficulties continued to exist. He assured the Committee that its recommendations would be examined in detail by the appropriate bodies in Ukraine, and he stressed his country's readiness to work towards eliminating torture in all its forms.

8. Mr. EL MASRY, speaking as Country Rapporteur, commended Ukraine on the timely submission of its report and acknowledged the significant progress that had been made in the reform process. Since the third periodic report, Ukraine had recognized the Committee's competence under articles 21 and 22 of the Convention and had withdrawn its reservation to article 20. He welcomed the fact Ukraine had abolished the death penalty and had become a party to a number of other human rights instruments.

9. However, he regretted that the fourth periodic report had not provided more information relating to certain articles of the Convention. For example, deportations that had taken place in Ukraine merited mention under article 3. He also recalled that, in its conclusions and recommendations concerning the third periodic report, the Committee had suggested that a comprehensive plan to eliminate torture should be drawn up that would include the provision that torturers would be punished under the law. He had received an unofficial translation of article 127 of a bill that was before Parliament concerning torture, and he believed that such legislation would represent a significant improvement, since it would allow the courts to prosecute crimes of torture.

10. Ukraine had no legal provision stipulating that evidence obtained through torture was inadmissible in court, and the definition of torture in the Criminal Code, to which the representative of Ukraine had just referred, differed in two respects from article 1 of the Convention. First, it did not mention the use of torture to obtain confessions and, secondly, it made no reference to public officials. He wondered whether that meant that the law also applied to acts by private citizens.

11. A local non-governmental organization (NGO) had documented 174 cases of torture during preliminary investigations, of which 26 had led to death. The cruel treatment suffered by young army recruits was also a problem. However, there had been some success in limiting that phenomenon as a result of cooperation between the Government and NGOs.

12. He asked the delegation to clarify the contradiction between paragraph 34 of the report, which stated that the Constitution stipulated that no exceptional circumstances could justify a restriction of the human rights and freedoms referred to in the Convention, and paragraph 71, which stated that certain rights and freedoms could be temporarily restricted in some circumstances. He specifically wished to know what those rights and freedoms were.

13. With regard to convictions obtained through the use of torture, he drew attention to a statement by the Ombudsman that 30 per cent of all detainees in Ukraine were tortured. NGOs had also reported many cases in which prisoners had been beaten in order to force them to waive their right to legal counsel. Human rights groups had pointed out that many laws from the Communist period were still in force and that some articles of the new Criminal Code were based on laws enacted during the Stalinist era. However, one positive development was that information on human rights could be transmitted to other States and organizations as a result of reforms of the laws governing State secrets.

14. Although the State party reported that there had been no change in either its law or practice with regard to article 3 of the Convention, there were disturbing reports from NGOs of expulsions carried out with the cooperation of Ukrainian and Uzbek law enforcement agencies. There were claims, for example, that two prominent members of the banned ERK Democratic Party of Uzbekistan who had fled to Kiev in 1994 had been expelled from Ukraine in 2000. He wished to know whether the Ukrainian authorities had been convinced that those persons would not be subjected to torture following their expulsion. He noted also that Ukraine was not a party to the Convention relating to the Status of Refugees and that the Office of the United Nations High Commissioner for Refugees had recently identified gaps in Ukraine's legislation with regard to the treatment of refugees. While article 3 of the Convention did not refer to refugees as such, he would be interested in hearing the delegation's views on that subject.

15. One encouraging development was the independence shown at senior levels of the appeals commission of the State Department for Nationalities and Migration, which had overturned a number of decisions by regional immigration services. Clearly, Ukraine had managed to establish a functioning asylum system that met international standards. Another major step was the provision in the amended Citizenship Act that made it easier for large numbers of Crimean Tatars who had been displaced during the Soviet era to return to Ukraine and acquire citizenship.

16. It was unfortunate that the report had not been submitted in accordance with the Committee's guidelines. For example, the information provided with regard to article 7 (paras. 48-67) also related to a number of other articles of the Convention, while the information in paragraph 67, on the applicability of the Ukrainian Criminal Code to crimes committed outside Ukraine, made no reference to torture or to the obligation to extradite. He wondered how that information was related to the State party's obligation under article 7 regarding offences referred to in article 4: did the authorities deal with those offences in the same way as it dealt with other serious offences?

17. As suspects were often most vulnerable to ill-treatment immediately after being detained, it was vital that they should have access to defence counsel at the earliest possible opportunity. He wished to know the exact point at which an individual being held in custody had access to a lawyer. According to paragraph 52 of the report, it was as soon as the individual was taken into custody, yet paragraph 66 referred to the moment at which charges were preferred and paragraph 78 to some time "before the initial interrogation". There were reports from NGOs that lawyers were often called in only after suspects had been transferred from temporary cells to pre-trial investigation facilities, and the Helsinki Committee in Ukraine regularly received complaints that suspects had to wait two weeks before they could see a lawyer and that a simple

request to see a lawyer could lead to a severe beating or other ill-treatment. There were also reports that defence lawyers were actually prevented from meeting their clients; for that reason, the Crimean Bar Association was campaigning to make it illegal to interrogate a suspect in the absence of a defence lawyer. The Committee would welcome clarification on those matters.

18. He understood that legislation to reserve detention for the most serious cases and to provide for other forms of preventive measures had been proposed by parliament but vetoed by the President. Moreover, the changes to the Code of Criminal Procedure did not meet the requirements of the Convention; detention during a preliminary investigation could still last up to 18 months, as had been the case prior to the Code's amendment. One Ukrainian NGO claimed that in practice there was no limit to the time a person could be detained without trial, and no distinction was made between suspects and convicted persons. In that connection, paragraph 62 of the report mistakenly referred to the pre-trial detention of persons "guilty", rather than suspected, of petty hooliganism. Moreover, treating the organizers of meetings or demonstrations in the same way as petty hooligans for failing to "observe the procedure" (para. 62) amounted to degrading treatment and ran counter to the trend towards openness and democracy.

19. Referring to the information in paragraph 68 of the report on articles 8 and 9 of the Convention, he asked whether extradition was conditional on the existence of a treaty between Ukraine and the country concerned and, if so, whether the Convention was considered a legal basis for extradition with regard to the crime of torture.

20. On the question of the independence of the judiciary and the separation of powers, he noted that, despite the action promised when Ukraine had presented its second periodic report, most NGOs considered the current legal system to be "Soviet-minded" and loyal to the executive. According to the 2000 report of the Ukrainian Helsinki Committee, courts were "penitentiary bodies" that almost always sided with the prosecution. For example, a committee to coordinate crime-fighting had been set up jointly by judges, the Ministry of Internal Affairs and the Procurator so that they could cooperate in the preparation of indictments. He invited the Ukrainian delegation to comment on those claims.

21. Lastly, he wished to know whether it was true that the tax police could confiscate property without the need for a court decision.

22. Mr. RASMUSSEN, speaking as Alternate Country Rapporteur, said that there was much to commend in Ukraine's report, not least the fact that it had been submitted on time. He welcomed the important legislative changes and other developments mentioned in the introductory statement by the representative of Ukraine, particularly the country's ratification of Protocols 1 and 2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which meant that Protocol No. 1 would enter into force in March 2002, thereby allowing States that were not members of the Council of Europe to accede to it. The visits of a delegation from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment appeared to have led to fruitful discussions, but the Committee would be in a better position to form an opinion if the reports of those visits were made public.

23. Like Mr. El Masry, he found that the report did not comply fully with the guidelines for periodic reports, which made the Committee's task somewhat more difficult. For example, the paragraphs relating to article 10 of the Convention dealt largely with the interrogation of suspects, which was not the main subject of that article. The Committee's work was further hampered by the fact that it had received NGO reports at the very last minute, rather than three weeks in advance as agreed, although that was admittedly not the fault of the State party.

24. He was disappointed with the information in paragraphs 72 and 74 of the report, relating to article 10 of the Convention, particularly in the light of the Committee's recommendation, after its consideration of Ukraine's third periodic report, that particular importance should be given to the organization of special training for the personnel of correctional institutions, especially doctors, in the principles and standards of the Convention. He was aware that the International Rehabilitation Council for Torture Victims had a very promising project under way to train prison staff in Ukraine, involving the Ukrainian Ombudsman and the International Medical Rehabilitation Centre for torture survivors in Kiev, but he wished to know what other activities were being undertaken in Ukraine in relation to article 10.

25. With regard to article 11, he drew attention to a passage in the 2001 report of the International Helsinki Federation for Human Rights, which cited allegations that most convictions in Ukraine were based on guilty pleas and that it was considered important for police investigators to extract confessions if they wished to advance their careers. Those were serious allegations, and he would like to hear the views of the delegation on the subject.

26. One way of combating torture was through inspections. Drawing attention to paragraph 73 (c) of the report, he asked how many complaints of torture had been received by the Commissioner for Human Rights and what action had been taken on them. Regarding the Commissioner's function of ensuring that the constitutional rights of citizens and the law were observed (para. 73 (d)), he enquired whether that meant that the Commissioner could make unannounced visits to police stations, how many such visits had been carried out and whether the Commissioner had identified cases of torture. He also asked whether the Ombudsman, who was a woman, could visit police stations, holding facilities of the public security militia and other custodial institutions. Was the Ministry of Internal Affairs involved with such holding facilities (para. 77)?

27. In its concluding observations on Ukraine's third periodic report, the Committee had considered the 18-month maximum period during which an accused person could be held in custody to be excessive and had recommended that it should be reduced. He wondered whether anything had been done to follow up that recommendation.

28. It was impressive that procurators had visited more than 4,000 holding facilities in 1999 (para. 90), but it was more important to know what the outcome of those visits had been. He wondered whether the procurators had identified any cases of torture and, if so, how many persons had been prosecuted. He realized that the question might be premature, since new legislation on that subject had only entered into force in September.

29. With regard to article 12 of the Convention, he noted that paragraph 44 gave the number of complaints received for unlawful arrest, detention or search involving the use of physical force or discourtesy to members of the public and other unlawful acts. It would be useful to know how many of those complaints related to torture or inhuman or degrading treatment. In its concluding observations on Ukraine's third periodic report, the Committee had stressed that the State party lacked a sufficiently effective system of independent bodies capable of successfully investigating complaints and allegations of the use of torture, preventing and putting an end to torture and ensuring that the perpetrators of such acts were held fully responsible for them. He asked the delegation of Ukraine to comment on that point.

30. One effective tool for monitoring involvement by officials in torture was the medical examinations of persons held in custody. Did persons in police custody have the right to ask to see an independent doctor? Were they examined upon arrival at all places of detention? What procedure was followed if a person was brought in showing signs of physical abuse?

31. He sought further information on a report by the Ombudsman alleging that, despite legislative guarantees, Ukraine lacked effective mechanisms to protect human rights, that the Office of the Ombudsman was insufficiently funded and that its employees sometimes were not paid.

32. According to a recent Amnesty International document intended for the Committee, two detainees in the town of Zaporizhzhya had been beaten up on 19 February 2000 and forced to confess to stealing several cars. The police had reportedly confiscated the car and money of one of the detainees. Amnesty International had written to the Ukrainian authorities to request the findings of the investigation into the alleged incident, but had not received a response. He asked the delegation to comment on the case, which the authorities had seemingly failed to investigate promptly.

33. Turning to article 14, he noted that the Ukrainian Constitution included the obligation to provide full compensation for damage inflicted by the State, but contained no specific requirement of rehabilitation. He asked how many victims of acts of torture had received compensation. He wondered whether persons who had been deprived of their liberty for long periods and had then been found innocent received compensation automatically, or whether they had to institute civil proceedings. Were there any figures on such cases? In that connection, he was pleased to note that Ukraine had a rehabilitation centre for torture survivors in Kiev.

34. He had received reports that Ukraine had serious problems with rape. One women's group had referred to a report alleging that between 10 and 15 per cent of Ukrainian women had been raped and 25 per cent physically abused in their lifetime. The World Organization against Torture had reported that women wishing to bring complaints of domestic violence frequently came under pressure from lawyers and the police to reconcile with their husbands or partners and that some prosecutors had refused to take up cases of domestic violence even in situations where women had suffered serious injuries. There was apparently no State support for women who were victims of psychological violence that enabled them to bring complaints before the courts.

35. With regard to article 15 of the Convention, he noted that the Committee had received reports that police officers were using torture to extract confessions because the more cases they "solved", the faster they were promoted. As neither the current nor the previous report had provided much information on the implementation of article 15, he sought further information on the subject.

36. Turning to article 16, he said he was pleased to learn that Ukraine was introducing alternative penalties to imprisonment. According to the annual report of the International Helsinki Federation for Human Rights, Ukraine had serious problems with prison overcrowding, small cells and poor detention conditions. He asked whether persons were sometimes held in police stations beyond the 72 hours allowed, a period which in itself was excessive. According to the report, vagrants could be held in special militia facilities for up to 30 days and persons without identity papers for up to 10 days (paras. 62 and 64); however, it was not clear how long criminal suspects could be held. He also wondered how many persons were held in pre-trial detention facilities and in centres for convicted persons, and asked whether persons in pre-trial detention were held separately or together with convicted persons. It would be useful to know the length of the average sentence for convicted persons, the capacity of the various detention facilities and the number of inmates. Lastly, he asked how serious the problem of tuberculosis among inmates was and whether Ukraine had sufficient resources for diagnosing and treating the disease and separating the ill so as to reduce the risk of contagion.

37. Mr. GONZÁLEZ POBLETE enquired whether the procurator's office or a judicial body was responsible for starting the initial inquiry referred to in paragraph 49. He also asked whether legislation established which facts or evidence warranted detaining a person on suspicion of having committed an offence. Did objective criteria exist, or was detention based on a subjective decision by the person responsible for the inquiry? According to Ukrainian law, detention must be officially registered. He wondered what information appeared in such documents, apart from the time and place of detention. It would be useful to know whether testimony was taken from the police officers placing a person in detention, for when complaints were made of torture or of confessions extracted by coercion on the part of the police, it was often difficult to identify the guilty parties.

38. Paragraph 52 of the report stated that a person was entitled to the services of a defence counsel upon being taken into custody, whereas other paragraphs suggested that a person could not see a lawyer until he had made a statement. He sought clarification on that point and wondered whether the statements in question were made before a judge, the police or a procurator.

39. According to paragraph 64 of the report, suspected vagrants could be detained for up to 30 days. That was a situation which often led to police abuse; persons could become suspects merely because they were shabbily dressed or unemployed or had no fixed abode. He asked whether article 11 of the Militia Act set any conditions for detaining suspected vagrants.

40. Ms. GAER, referring to paragraph 91 of the report, asked how many of the 19 criminal prosecutions of prison officers had involved ill-treatment. The State party should indicate how many individuals had been found guilty and punished as a result of investigative procedures at

confinement facilities and cite more recent statistics, if possible. The Committee had previously commented on the phenomenon of hazing and brutality in the military, and it was gratifying to note that Ukrainian NGOs had reported a decline in the number of such cases in recent years. Furthermore, it appeared that the Ministry of Defence now had a policy of investigating such incidents thoroughly. Nevertheless, hazing practices continued to occur, and the State party should indicate how many military officers had been disciplined or imprisoned for such offences. Did victims of hazing receive any help or compensation, and were they at least transferred away from the abusive situation? Generally speaking, more information was needed on what was being done to end the "institutionalized practice" of hazing.

41. The dual function of the Procurator's Office, combining as it did a prosecuting role with an investigative mandate, remained a cause for concern. The Committee would be grateful for more detailed information on steps taken to guarantee the independence and impartiality of the investigative functions of the Procurator's Office. In that connection, she would appreciate more information about the case of Sergei Ostapenko, who had been strung up by his handcuffs and had subsequently died of his injuries. What medical attention had Mr. Ostapenko received in connection with that incident?

42. The flourishing of civil society in Ukraine was a positive development, and investigative journalists and whistle-blowers had done some remarkable work. Sometimes, however, representatives of civil society had fallen foul of the authorities. The death or "disappearance" of Georgiy Gongadze in September 2000 was a case in point. A whistle-blower had subsequently made some extraordinarily and serious allegations about Mr. Gongadze's "disappearance", but instead of investigating the claims the authorities had simply arrested and charged the whistle-blower. She wondered what mechanisms were in place to ensure that whistle-blowers were not subject to persecution or harassment.

43. Additional details on the existence of a system for monitoring sexual violence against women in penitentiaries would be welcome. She specifically wished to know whether there was a complaints mechanism, a psychological counselling service and a system of preventive measures in place. The State party should confirm that there were no women-only prisons in Ukraine and provide more detailed information about prison warders charged with supervising female inmates. She was pleased to note that the Ukrainian authorities were aware of the problem of trafficking of women and had started to do something about it, but at the same time the Government appeared to be over-reliant on foreign assistance. Insufficient domestic resources had been devoted to the problem. For example, it appeared that trafficking had not been fully criminalized under Ukrainian law. What training had been given to police and immigration officers to prevent trafficking?

44. The CHAIRMAN said that, in considering the Ukrainian report, he had operated on two assumptions, namely that the militia were analogous to the police in other countries and that Ukraine exercised universal jurisdiction over all forms of torture and all torturers in its territory, regardless of where the torture had actually taken place or the nationality of the torturer.

45. Echoing the point raised earlier about the commingling of administrative and quasi-judicial functions in Ukraine, he said that he, too, had been concerned to note that judges drew up indictments in conjunction with procuratorial officials and employees of the Ministry of Internal Affairs. It was most unusual, first of all, for judges to draw up indictments, and highly irregular for them to hear cases on the basis of those same indictments.

46. The State party might wish to share its definition of the term "vagrant" (para. 64 of the report), with the Committee, since 30 days' detention for what was essentially a status offence seemed somewhat draconian, unless poverty and homelessness were crimes in Ukraine. In paragraph 62, the meaning of the term "administrative offence" was unclear and should be elucidated. If petty offence was the intended meaning, the length of the period of detention seemed somewhat excessive, especially considering that the militia was entitled to detain administrative offenders without procuratorial authorization.

47. In the light of the statement that petty hooligans could be detained pending a hearing by a judge or chief officer of an internal affairs authority, a number of points required clarification. First, it was unclear whether presumption of innocence was a valid legal doctrine in Ukraine: a person was normally presumed to be innocent while his case was being investigated. Second, a definition of "chief officer of an internal affairs authority" would be enlightening, because paragraph 62 appeared to state that bureaucrats possessed summary powers of arrest and adjudication. Third, it would be interesting to hear the justification for empowering a militia officer to arrest someone simply because he felt "insulted". Lastly, he sought a precise definition of the term "administrative detention", mentioned in paragraph 63, and an explanation of how it differed from the detention referred to in the preceding paragraph.

The meeting rose at 12.50 p.m.